

U.S. Environmental Protection Agency
Office of Pollution Prevention and Toxics

INTERPRETIVE GUIDANCE FOR THE FEDERAL PROGRAM
TSCA SECTIONS 402/403

FINAL 12/07/01

Q/A(8) Abatement Definition

“Scope and Applicability”
“Work Practice Standards”
“403 Rule”

§745.223 Definitions

Abatement means any measure or set of measures designed to permanently eliminate lead-based paint hazards. Abatement includes, but is not limited to:

(1) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(2) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

(3) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals certified in accordance with Sec. 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to State or local abatement orders.

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

Q1: Did the final TSCA section 403 rule (“403 rule”) “Identification of Dangerous Levels of Lead” published 01/05/01 change the meaning of the definition of “abatement”?

A1: No. Prior to the publication of the final 403 rule, the language of paragraph (1) of the abatement definition read:

(1) The removal of lead-based paint and lead-contaminated dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of lead-contaminated soil;...

The final 403 rule changed the language of the example in paragraph (1) but not the meaning of abatement. The references to “lead-contaminated soil” and “lead-contaminated dust” were deleted, because they have no direct effect on any activities subject to regulation under Title X or TSCA (66 FR at 1213, 01/05/01). Because those terms were deleted, EPA added the reference to the presence of lead-based paint hazards to clarify that abatement does not include removal of paint, dust, and soil unless lead-based paint hazards are present in those media (66 FR at 1211).

Q2: What is the relationship of the various paragraphs under the abatement definition at §745.223?

A2: The initial paragraph, which is not numbered, provides the basic definition of abatement – intent to permanently eliminate lead-based paint hazards.

Persons attempting to determine if an activity is abatement should consider both the basic definition in the initial paragraph of §745.223 and the examples and exclusions in paragraphs (1)-(4). Although paragraphs (1)-(4) provide examples of what is or is not abatement, they do not provide an exhaustive list and they should not be treated as alternatives to the basic definition of “abatement” contained in the initial paragraph of §845.223. Accordingly, even if an activity is not expressly included or excluded in paragraphs (1)-(4), it would still be considered abatement if it meets the test of the basic definition in the initial paragraph (i.e., a measure or set of measures designed to permanently eliminate lead-based paint hazards). Conversely, if an activity is included in paragraphs (1)-(4) but is not designed to permanently eliminate lead-based paint hazards, the activity is not abatement.

Q3: Immediately following the completion of renovation activities, a company conducts a clearance examination which reveals dust levels above the clearance standard. Is removal of dust to address the failure of this clearance examination considered abatement?

A3: No. The removal of dust to address the failure of the clearance examination would be considered part of cleanup from the renovation. Routine cleanup of renovation-related dust is not abatement, even if the dust is known to be above the dust lead hazard standard. EPA has lead safe information available for homeowners and maintenance people. Check EPA’s lead home page at [http: www.epa.gov/lead](http://www.epa.gov/lead) or contact the National Lead Information Center at 1-800-424-LEAD. Although the use of trained, certified professionals is not required, those persons who wish to have a thorough cleanup of renovation-related dust that constitutes a lead hazard should consider hiring trained and certified professionals.